



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 11244547

Date: AUG. 10, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the

sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>2</sup> grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree or its equivalent.<sup>4</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.<sup>5</sup> The Petitioner indicates his proposed endeavor is to:

[C]ontinue my career in the U.S., leveraging my expertise as a [s]oftware [d]eveloper to serve companies, organizations, and individuals, in any industry, that need a creative mind to improve and create their computer programs . . . . My current and past endeavors will allow me to plan, direct, and coordinate technical activities in cross-platform mobile projects, to improve the standards, and exceed customer expectations for companies and clients in the United States.<sup>6</sup>

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.<sup>7</sup>

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide valuable consulting services for his employer and its clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance.<sup>8</sup> In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer and clientele to impact his field or the nation more broadly at a level commensurate with national importance.

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> The Petitioner presents copies of his diploma and transcripts for his bachelor of computer engineering degree from [redacted] University [redacted] in Brazil, and other evidence documenting at least five years of post-baccalaureate progressive work experience in the specialty. See 8 C.F.R. § 204.5(k)(3)(i)(B).

<sup>5</sup> The Petitioner submitted evidence to support the petition. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>6</sup> We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

<sup>7</sup> We acknowledge the articles and opinion pieces provided by the Petitioner that highlight the importance of the information technology field in the United States. We also agree with the Director that the Petitioner's endeavor has substantial merit.

<sup>8</sup> On appeal the Petitioner asserts that he will also prospect "employment opportunities in diverse U.S. companies [as] a self-employed professional (IT Consultant) in the field." But, he has not sufficiently articulated or documented how his independent consultant activities would impact his field, beyond providing services to his own clients.

For instance, the Petitioner has been providing software development services through his employment with [redacted] [A-] since 2014, and provided copies of his recent work product, to include product demonstration materials developed for A-'s in-house and client projects, and a tutorial guide prepared for A-, entitled [redacted]. While A-'s in-house development staff and its clients may have found these materials to be instructive, the record does not substantiate that this documentation has or will engender wider interest or use within the IT field.

Additionally, the Petitioner provided reference letters, including one from D-W-, who is president and partner in banking for A-, who explained:

[The Petitioner] was assigned to A- [redacted] where he [has] played key roles in our [projects]. . . [The] areas that [the Petitioner] has worked on in the past few years have put him in position to be the most knowledgeable and proficient developer, second to none, in A- [redacted] for A-'s proprietary solution; all of the other product developers for A-'s proprietary solutions reside in Europe, making [the Petitioner] the single point of contact for development requirements and defects that need to be resolved during our U.S. client's work day.

D-W- and the other A- colleagues who provide letters of reference favorably comment on the Petitioner's contributions to its projects, and emphasize that he "[h]olds significant specialized knowledge related to A-'s proprietary software programs."<sup>9</sup> However, considering the record in its entirety, we conclude that the Petitioner does not adequately describe or demonstrate how his future software development work stands to rise to the level of having national importance within the information technology (IT) field.<sup>10</sup> The record does not show, for instance, that the specific work the Petitioner proposes to undertake will offer original innovations to advance the aforementioned industry, or that it otherwise has wider implications in his field. As discussed, the evidence did not sufficiently articulate how his particular proposed endeavors would have national importance beyond his prospective employers and their clients.

On appeal, the Petitioner asserts that "his endeavor is not in any way limited to one particular corporation and their clients, but has a much broader scope and breadth. His unique expertise can be applied to the modernization of any corporation, banking or finance institution, in a multitude of industries." Throughout this proceeding, the Petitioner points to his education, IT skills – including his knowledge of software development languages and possession of software development certifications, project management abilities, and his years of experience working in the IT field. The Petitioner's knowledge, skills, and consulting experience, however, are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here under the first prong is whether the Petitioner has demonstrated the national importance of his proposed work.

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<sup>9</sup> See, for instance, the letter of reference from K-L-, [redacted] s at A-.

<sup>10</sup> It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

Furthermore, while the Petitioner asserts there is a “looming shortage of IT talent” in the United States, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed